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SUPREME COURT OF THE UNITED STATES.

No. 177.

JEROME B. PILLOW, PLAINTIFF IN ERROR,

vs.

TRUMAN ROBERTS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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Gunnar, Print.

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The UNITED STATES OF AMERICA,
District of Arkansas, sct.

Pleas before the honorable Daniel Ringo, district judge of the United States, in and for the district of Arkansas; and, as such judge, holding a term of the United States circuit court for said district at the city of Little Rock, at the April term thereof, A. D. 1850. At which the following proceedings were had, to wit:

UNITED STATES OF AMERICA,
District of Arkansas, sct.

In the circuit court of the United States, for the district of Arkansas.
In vacation, February, A. D. 1850.

Truman Roberts, who is a citizen of the State of Missouri, and a plaintiff in this suit by attorney, complains of Jerome B. Pillow, who is a citizen of the State of Arkansas, and defendant herein, of a plea wherefore he, with force and arms, entered into and upon the southeast quarter of section numbered twenty three, in township numbered one, *one* south, range numbered three east, containing one hundred and sixty acres of land, of him, the said Truman, and ejected the said Truman therefrom, and other wrongs to the said Truman there did, to his great damage, and against the peace of the said United States.

For that the said plaintiff, heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and fifty, in the said district of Arkansas, was entitled to the possession of the said southeast quarter of section numbered twenty-three, in township numbered one south, range numbered three east, containing one hundred and sixty acres of land, situated in Phillips county, in the said district of Arkansas, and of great value, to wit, of the value of four thousand dollars. And he, the said plaintiff, then and there being so entitled to the possession thereof, the said defendant afterwards, to wit, on the same day and year last aforesaid, in the district aforesaid, with force and arms, entered into and upon the said above described tract of land, containing one hundred and sixty acres, and ejected the said plaintiff therefrom, and still unlawfully withholds the possession thereof from the said plaintiff; and other wrongs to the said plaintiff then and there did, contrary to the peace of the said United States, and to the damage of the said plaintiff of five thousand dollars; and therefore he sues, &c.

A. FOWLER,
Attorney for the plaintiff.

I, Absalom Fowler, acknowledge myself security for all costs for which the plaintiff may be liable in this suit.

A. FOWLER.

Little Rock, February 13, 1850.

The clerk will issue writ of summons, &c.

A. FOWLER, *Attorney.*

February 13, 1850.
Marked thus—Filed February 13th, 1850.

WM. FIELD, *Clerk,*
By R. SEARCY, *D. C.*

Writ issued same day in the following words and figures, to wit:

UNITED STATES OF AMERICA,
District of Arkansas.

The President of the United States, to the marshal of the Arkansas district, greeting:

You are hereby commanded to summon Jerome B. Pillow, who is a citizen of the State of Arkansas, if he be found within your district, to appear before the judge of the circuit court of the United States, in and for the said district of Arkansas, at the court-house, in the city of Little Rock, on the first day of the next April term of said court, to answer Truman Roberts, who is a citizen of the State of Missouri, of a plea wherefore he, with force and arms, entered into and upon the southeast quarter of a section numbered twenty-three, in township numbered one south, range three east, containing one hundred and sixty acres of land, of him, the said Truman, and ejected the said Truman therefrom, and other wrongs to him did against the peace of the said United States, and to the damage of the said Truman of five thousand dollars, and have you then there this writ.

In testimony whereof Roger B. Taney, esq., chief justice of the Supreme Court, has caused the seal of said circuit court to be hereto affixed, this 15th day of February, A. D. 1850, and in the 74th year of our independence.

Attest.

WM. FIELD, *Clerk,*
By R. SEARCY, *D. C.*

Endorsed as follows, to wit:
Come to hand 16th February, 1850.

L. CHASE, *Marshal.*

Executed the within by leaving a copy of the same at the usual place of abode of the within named Jerome B. Pillow, in Phillips county, Arkansas, with the overseer of said plantation, a white member of said Pillow's family, (in said county,) over the age of sixteen years.

LUTHER CHASE, *Marshal,*
By Q. R. UNDERWOOD, *D. M.*

Fees.

Mileage, 300	
Cir. miles, at 5c., is - - - - -	$15 00
Service - - - - - - -	2 00
	$17 00

Returned and filed March 18, 1850.

WILLIAM FIELD, *Clerk*,
By R. SEARCY, *D. C.*

And at a circuit court of the United States, for the district aforesaid, continued and holden on the 12th day of April, A. D. 1850, before the honorable Daniel Ringo, United States judge, the following proceedings were had, to wit:

TRUMAN ROBERTS, plaintiff,
vs.
JEROME B. PILLOW, defendant. } Ejectment.

This day came the parties by their attorneys, and the said defendant enters his plea of not guilty, and the said plaintiff enters his joinder, all in short upon the record by consent.

And on the 18th day of April, 1850, the following further proceedings were had before said court, to wit:

TRUMAN ROBERTS, plaintiff,
vs.
J. B. PILLOW, defendant. } Ejectment.

This day came the parties aforesaid by their attorneys, and the said defendant filed his notice of the title made, which he claims, and on the trial he would insist upon damages, for value of improvements; and on further motion, and by leave of the court, he files two additional pleas to the statute of limitation.

The notice is in the following words, &c., to wit:

ARKANSAS DISTRICT:

In United States circuit court, April term, A. D. 1850.

TRUMAN ROBERTS, plaintiff,
vs.
JEROME B. PILLOW, defendant. } In ejectment.

The said Jerome B. Pillow, said defendant, hereby avers and gives notice to the said plaintiff, that he claims the lands in in said declaration mentioned, under and by virtue of sales thereof, made by the sheriff of Phillips county, in said State, under the provisions of the revenue laws of said State for the raising of taxes.

That, since the purchase thereof, for taxes as aforesaid, under the revenue laws aforesaid, this defendant, and those under whom he claims

the said tax title, have made lasting and valuable improvements on said lands, amounting in value to the sum of ten thousand dollars.

And that on the trial of this cause said defendant shall claim the right to, and will prove the value of, the said improvements, so made as aforesaid, and demand judgment therefor, or for the excess thereof over the damages, which may be assessed to the said plaintiff, in case said plaintiff should succeed in said action.

April 18th, 1850.

PIKE & CUMMINS,
Attorneys for defendant.

Filed April 18th, 1850.

WM. FIELD, *Clerk*,
By R. SEARCY, *D. C.*

Additional pleas, in the following words, to wit:

ARKANSAS DISTRICT:

In United States circuit court, April term, A. D. 1850.

TRUMAN ROBERTS, plaintiff,
vs.
JEROME B. PILLOW, defendant. } Ejectment.

And now, on this day, comes the said defendant, and by leave of court first had, for a further plea in this behalf says, actionem non, &c. Because, he says, that the cause of action in said declaration mentioned did not accrue to the said plaintiff at any time within five years next before the institution of this suit; and said defendant and his assigns holds and claims said lands, by virtue of a sale thereof and purchase, under the revenue laws of the State of Arkansas. And this he is ready to verify; wherefore he prays judgment, &c.

And for a further plea in this behalf said defendant says, actionem non, &c.; because, he says, that the cause of action in said declaration mentioned, did not accrue to the said plaintiff within ten years next before the institution of this suit. And this he is ready to verify; wherefore he prays judgment.

PIKE & CUMMINS, *Attorneys.*

Filed April 18th, 1850.

WM. FIELD, *Clerk*,
By R. SEARCY, *D. C.*

And on the 24th day of April, A. D. 1850, the following further proceedings were had in said court, to wit:

TRUMAN ROBERTS, plaintiff,
vs.
JEROME B. PILLOW, defendant } Ejectment.

This day came the parties, by their attorneys, and the plaintiff files his motion, in writing, to strike out said defendant's first plea, which

motion was sustained; and on motion of the said defendant, it is ordered, that he have leave to amend his said first plea, which was accordingly amended and refiled. Whereupon, by consent, the plaintiff enters his replication and issues to both the pleas of said defendant, all in short upon the record; and on further motion of the said defendant, it is ordered, that this cause be, and the same is hereby, continued until the next term of this court.

Motion to strike out plea is in the following words, to wit:

"In circuit court of the United States, April term, A. D. 1850."

TRUMAN ROBERTS
vs.
JEROME B. PILLOW. } In ejectment.

And the said plaintiff, by attorney, comes and moves the court here to strike out and take from the files of this cause the paper purporting to be a plea of the statute of limitations of five years, for the reason that there is no law in force authorizing such a plea.

A. FOWLER,
Attorney for the plaintiff.

Filed 24th April, 1850.

WM. FIELD, *Clerk*,
By R. SEARCY, *D. C.*

And on the 30th day of May, A. D. 1850, before the clerk of the said United States circuit court, the following further proceedings were had in the vacation of said court, to wit:

TRUMAN ROBERTS, plaintiff,
vs.
JEROME B. PILLOW, defendant. } Ejectment.

Now at this day come the said defendant, by his attorneys, and thereupon, on their motion, it is ordered that they have, and leave is hereby granted to them, to take the depositions of witnesses generally, before any judge or justice of the peace of the United States, or any one of them, to be read as evidence on the trial of this cause.

(Attest.) WM. FIELD, *Clerk*,
By R. SEARCY, *D. C.*

The following copy of the foregoing rule, and a commission thereon, is in the following words, to wit:

UNITED STATES OF AMERICA,
District of Arkansas.

Before the clerk of the circuit court of the United States, for the district of Arkansas, in vacation, on the 30th day of May, A. D. 1851.

TRUMAN ROBERTS, plaintiff,
vs.
JEROME B. PILLOW, defendant. } Ejectment.

Now at this day come the said defendant, by his attorneys, and thereupon, on their motion, it is ordered that they have, and leave is hereby granted to them, to take the depositions of witnesses generally, before any judge or justice of the peace of the United States, or any one of them, to be read as evidence on the trial of this cause.

(Attest.) WM. FIELD, *Clerk*,
By R. SEARCY, *D. C.*

A true copy from the record.

(Attest.) WM. FIELD, *Clerk*,
By R. SEARCY, *D. C.*

UNITED STATES OF AMERICA,
District of Arkansas.

The president of the United States, to any judge or justice of the peace of the United States, greeting.

You are hereby required to cause to come before you all witnesses whatever, and them diligently examine, as well on the part of the plaintiff as of the defendant, in a certain suit now pending in our said circuit court, in which Truman Roberts is plaintiff, and Jerome B. Pillow is defendant; and that you then and there examine them apart, upon their respective corporal oaths, first taken before you upon the holy evangelists, and that you reduce their examination to writing; and when you shall have so taken them, that you send the same, with this dedimus closed up, under your seal, to our said circuit court, at the city of Little Rock, without delay.

In testimony whereof Roger B. Taney, chief justice of the United States, hath caused the seal of said court to be hereunto affixed, this 30th day of May, A. D. 1850, and of our independence the 74th year.

[L. S.]

WM. FIELD, *Clerk*,
By R. SEARCY, *D. C.*

"The execution of this commission appears by schedule hereunto annexed.

A. G. UNDERWOOD, *J. P.*

"Depositions of witnesses taken and subscribed before me, A. G. Underwood, an acting justice of the peace for the county of Phillips, in the State of Arkansas, duly commissioned as such, on the 2d day of September, A. D. 1850, between the hours of 8 o'clock, a. m., and 5 o'clock, p. m., of said day, at the office of John Preston, jr., in the town of Helena, in the county of Phillips, in the State of Arkansas, in pursuance of a commission hereto annexed, and to be read as evidence

in a certain cause now depending in the circuit court of the United States, for the district of Arkansas, on the law side thereof, wherein Truman Roberts is plaintiff, and Jerome B. Pillow is defendant, on the part of the defendant.

Alburtis Wilkins, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matter in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

1st interrogatory by defendant. Are you acquainted with either of the parties to the above entitled suit?

Answer. No, sir.

2d interrogatory. Are you interested, directly or indirectly, in the event of said suit?

Answer. I am not.

3d interrogatory. Please examine the papers, marked A and B, herewith shown you, and say whether or not you subscribed the same as an attesting witness thereto.

Answer to 3d interrogatory. I did subscribe the *the* same, and my name as such attesting witness is my genuine signature.

4th interrogatory. Were you acquainted with William G. Rosser, and is he now living?

Answer to 4th. I was acquainted with him, and he is now dead.

5th interrogatory. Were you familiar with his handwriting?

Answer to 5th. I can't say that I am particularly familiar with his handwrit[ing], but I have frequently seen him write.

6th interrogatory. Please examine the papers, marked A and B, herewith shown you, and say whether or not the signatures of the said William G. Rosser, as an attesting witness thereto, is the genuine signature of the said William G. Rosser?

Answer to 6th. From my recollection and knowledge of his handwrit[ing] I believe it to be his.

Do you know anything further that would be of advantage to either of the parties in the above entitled suit?

Answer. I do not.

And further this deponent sayeth not.

ALBURTIS WILKINS.

Sworn to and subscribed before me—

A. G. UNDERWOOD, *J. P.*

And at the same time and place, before me, also appeared William Weatherby, a witness known to me to be of lawful age, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there on his oath aforesaid depose as follows:

1st interrogatory. Are you acquainted with either of the parties to the above entitled suit?

Answer. Yes, sir; I am acquainted with Jerome B. Pillow, the defendant.

2d interrogatory. Are you interested, directly or indirectly, in the result of said suit?

Answer to 2d. I am not.

3d interrogatory. Do you or not know the situation and location of the southeast quarter of section 23, in township one, 1, south, of range three, 3, east, of the 5th principal meridian? If yea, describe it.

Answer to 3d. I know its location, it is a part of Jerome B. Pillow's plantation on which I now live as manager, in Planter's township.

Interrogatory 4th. Do you know the character of the improvements made on the above described land? If yea, please state of what it consists.

Answer to 4th. All of said tract of land is now in cultivation, and nearly entirely clear of timber; I do not suppose there is more than one tree for every (2) two acres now standing.

Interrogatory 5th. Do you know whether or not any buildings have been erected on said land? If yea, please state the character of the buildings.

Answer to 5th interrogatory. I do know that there are buildings on said land, and they consist of fifteen negro houses, 16 by 18 feet in size, built of hewed logs and covered with boards.

Interrogatory 6th. What would you estimate to be the value of the buildings on said land?

Answer to 6th. I would say that each cabin is worth $50, fifty dollars, at the least, as they now stand.

Interrogatory 7th. Are there any other cabins in progress of being built on said land, and if yea, how many?

Answer to 7th. There are already logs hauled and placed upon said land, for the purpose of building other cabins than those mentioned above, the object being to build twenty cabins on said land.

Interrogatory 8th. When these twenty cabins shall be completed, what will you value them to be worth?

Answer to 8th. I suppose they will be well worth ninety dollars each.

Interrogatory 9th. What is the value of clearing such land, as is included in the tract above described, from a wild state to the condition that it now is in?

Answer to 9th. I would say, sir, from my knowledge of the growth *and* timber in that section of country, that $25, twenty-five dollars, an acre is as little as the work could possibly be done for.

Interrogatory 10th. Who has the occupancy and possession of the tract of land above described at the present time?

Answer to 10th interrogatory. Jerome B. Pillow.

And further this deponent saith not.

WILLIAM WEATHERBY.

Sworn to and subscribed before me—

A. G. UNDERWOOD, *J. P.*

And at the same time and place, before me, appeared Richard Wood, a witness known to me to be of lawful age, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then, on his oath aforesaid, depose as follows, to wit:

Interrogatory 1st. Are you acquainted with either of the parties to this suit?

Answer. I know Jerome B. Pillow.

Interrogatory 2d. Are you interested directly or indirectly in the result of this suit?

Answer to 2d. No.

Interrogatory 3d. Do you or not know the situation and location of the southeast quarter of section 23, twenty-three, in township 1, one, south, of range 3, three, east, of the 5th principal meridian; if yea, say how long you have known it.

Answer to 3d interrogatory. I do know said quarter section of land, and have known it for the last ten years, having resided on a quarter section adjoining to it; I know one of the corners of said above described tract; said land is now embraced in the plantation of Jerome B. Pillow, and is all cleared and in cultivation.

Interrogatory 4th. Do you or not know how long said Pillow has held possession of said land?

Answer to 4th. I think now that said Pillow has had possession, and been in the occupancy, of said tract of land between 2 and 3 years.

Interrogatory 5th. Do you know who first settled and cultivated said tract of land?

Answer to 5th interrogatory. When I came to the country the above mentioned land was occupied by George Vails, which was in the year 1838 or 1839, as well as I now remember.

Interrogatory 6th. Do you or not know who had and held possession and cultivated said land immediately after Vails?

Answer to 6th interrogatory. Major Richard Davidson was the next occupant of said land, who purchased it about the year 1843. I think, I am sure, it was not later than 1844, and was cultivating the same during the last mentioned year.

Interrogatory the 7th. Do you or not know how long the said land was in possession of the said Davidson?

Answer to 7th interrogatory. I think Davidson occupied and cultivated said land about three, 3, years; after which time he sold it to Armstrong, who afterwards sold it to Jerome B. Pillow, the present occupant.

Interrogatory 8th. Do you or not know the character of the improvements on the above mentioned land?

Answer to 8th interrogatory. I know it is all in a state of cultivation, the whole quarter section, and there are at present erected on it fifteen negro cabins.

Interrogatory 9th. What is it worth to clear and fence the said above described tract of land, and put it in the condition it now is?

Answer to 9th interrogatory. I think it worth at least 25, twenty-five dollars, per acre, independent of the cabins.

Interrogatory 10th. What are the cabins reasonably worth?

Answer to 10th interrogatory. I should say that the cabins which are yet unfinished are at present worth fifty dollars each.

Interrogatory 11th. How long has the possession of said land continued in Jerome B. Pillow, and in the possession of those from whom he purchased?

Answer to 11th interrogatory. I know that said tract of land has been in the possession and actual occupancy of said Jerome B. Pillow, and those from [whom] he purchased from the time that George Vails settled in 1838 or 1839; and further this deponent saith not.

RICHARD WOOD.

Sworn to and subscribed before me.

A. G. UNDERWOOD, *J. P.*

Exhibit (A) referred to.

This deed of conveyance, made this 22d day of October, in the year of our Lord one thousand eight hundred and forty-four, between Miller Irvin, sheriff of the county of Phillips, in the State of Arkansas, and assessor and collector of the taxes there, of the one part, and Richard Davidson, assignee of George W. Vails, who was assignee of John J. Powell, of the other part, witnesseth: That whereas the following tract of land, viz., the north half of the southeast quarter of section twenty-three, of township one south, in range three east, of the fifth principal meridian, containing eighty acres, lying in the said county of Phillips, in the State aforesaid, and patented to Leonard V. Henry, was among other lands entered and listed and assessed for taxation in said county in the name of Zimri F. Henry, agreeably to the laws of said State, regulating the collection of the taxes therein.

And whereas neither the said owner thereof, nor any other person or persons for him, having paid the State and county taxes assessed in pursuance of said laws, amounting to the sum of two dollars and forty-nine and half cents, due on said tract of land for the year 1840, within the time prescribed by law for the payment thereof, and there being no personal estate of the said Zimri F. Henry whereon to levy and make distress for the same; therefore, he, Miller Irvin, sheriff of the said county of Phillips, did proceed to advertise and give at least thirty days previous notice according to law, that he would sell at public auction on Monday, the first day of March, in the year 1841, at the court-house door in the town of Helena, in said county of Phillips, the said tract of land, or so much thereof as would be sufficient to pay the said taxes, costs, and charges due thereon for the year 1840; which said advertisement containing the name of the person purporting to be the owner, and a particular description of said land, and the amount of taxes due thereon, was published in the Southern Shield, a newspaper printed at Helena, in the said State, and also was set up at the court-house door

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of the said county of Phillips, at least thirty days previous to the said day of sale; and on the said first day of March in the year aforesaid, the said taxes and costs on said tract of land still remaining unpaid, he, the said Miller Irvin, sheriff as aforesaid, did proceed to sell, at public auction, at the court-house door of the said county of Phillips, the said tract of land, or so much thereof as would be sufficient to pay the taxes and costs due thereon as aforesaid. Whereupon, John J. Powell bid and offered to pay the taxes and costs due on said tract of land for the whole amount thereof; and, no other person or persons bidding or offering to pay the same for a less quantity thereof, the same was struck off to the said John J. Powell; which said State and county taxes and costs did amount to the sum of two dollars and 49½ cents. And the said John J. Powell having paid to Miller Irvin, sheriff as aforesaid, the said sum of two dollars and 49½ cents, the receipt whereof is hereby acknowledged, and the term of twelve months, the time allowed by law for the redemption of said tract of land, having expired since the day of sale; and the said Richard Davidson, assignee as aforesaid, having produced to me, Miller Irvin, the said sheriff, the certificate granted by Miller Irvin, as sheriff, to the said John J. Powell at the time of the purchase thereof; and the said Richard Davidson, assignee as aforesaid, requiring of me a deed for the same:

Now, know ye, that I, Miller Irvin, sheriff as aforesaid, by virtue of the authority in me vested by law, and in consideration of the said sum of two dollars and 49½ cents, so received by Miller Irvin, sheriff as aforesaid, have granted, bargained, and sold, and do by these presents grant, bargain, and sell, unto the said Richard Davidson, assignee as aforesaid, his heirs and assigns, the above described tract or parcel of land; hereby granting and conveying to the said Richard Davidson, assignee as aforesaid, his heirs and assigns, all the right, title, claim, and interest of the said Zimri F. Henry, and all and every person or persons whomsoever in the same, together with the tenements and hereditaments thereunto belonging. To have and to hold the said tract of land to the said Richard Davidson, assignee as aforesaid, his heirs and assigns, forever, as fully and absolutely as I, the said Miller Irvin, sheriff as aforesaid, and under the authority aforesaid, might, could, or ought to sell and convey the same.

In testimony whereof I, the said Miller Irvin, sheriff as aforesaid, have hereunto set my hand and seal, on the day and year first above written.

MILLER IRVIN, [SEAL.]
Sheriff of Phillips county.

In the presence of—
A. WILKINS,
WM. G. ROSSER.

STATE OF ARKANSAS, *Phillips county*.

This day personally appeared before me, the undersigned, and acting justice of the peace in and for the county aforesaid, Miller Irvin, sheriff

of Phillips county, to me personally well known, who stated and acknowledged that he voluntarily executed the within and foregoing deed, hereto annexed, for the consideration, uses, and purposes therein mentioned and set forth.

Given under my hand and seal, at Helena, this 22d day of October, 1844.

ALBURTUS WILKINS, [SEAL.]
Justice of the Peace.

STATE OF ARKANSAS, *county of Phillips, ss.*

I, Lorenzo D. Maddox, clerk of the circuit court, and ex officio recorder for the county aforesaid, do hereby certify, that the annexed and foregoing instrument of writing was filed for record in my office on the 26th day of October, A. D. 1844, and the same is now duly recorded in record book G, pages 352 and 353.

In testimony whereof I have hereto set my hand and affixed the seal of my office, at Helena, the 9th day of November, in the [L. S.] year of our Lord one thousand eight hundred and forty-four, and of the independence of the United States the 69th year.

LORENZO D. MADDOX,
Clerk and ex officio recorder.

Endorsed, to wit: This is the paper marked (A,) referred to in the deposition of Alburtus Wilkins, hereto annexed.

ALBURTUS WILKINS.

A. G. UNDERWOOD, *J. P.*

Exhibit (B) referred to.

This deed of conveyance, made this 22d day of October, in the year of our Lord one thousand eight hundred and forty-four, between Miller Irvin, sheriff of the county of Phillips, in the State of Arkansas, and assessor and collector of the taxes therein, of the one part, and Richard Davidson, assignee of George W. Vales, who was assignee of William Vales, of the other part, witnesseth: That whereas the following tract of land, viz., the south half of the southeast quarter of section twenty-three, of township one south, in range three east, of the fifth principal meridian, containing one hundred and sixty acres, lying in the said county of Phillips, in the State aforesaid, and patented to Leonard V. Henry, was, among other lands, entered, and listed, and assessed for taxation in said county, in the name of Zimri F. Henry, agreeably to the laws of said State regulating the collection of the taxes therein; and whereas neither the said owner thereof, nor any other person or persons for him, having paid the said State and county taxes assessed in pursuance of said laws, amounting to the sum of three dollars and seventy cents, due on said tract of land for the year 1839, within the time prescribed by law for the payment thereof, and there being no personal estate of the said Zimri F. Henry whereon to levy and make distress for the same:

4936.

Therefore he, Miller Irvin, sheriff of the said county of Phillips, did proceed to advertise and give at least thirty days previous notice, according to law, that he would sell, at public auction, on Monday, the fifth day of November, in the year 1839, at the court-house door in the town of Helena, in said county of Phillips, the said tract of land, or so much thereof as would be sufficient to pay said taxes, costs, and charges thereon due thereof for the year 1839. Which said advertisement, containing the name of the person purporting to be the owner, and a particular description of said land, and the amount of taxes due thereon, was published in the Arkansas Journal, a newspaper printed at Helena, in said State, and was also set up at the court-house door of said county of Phillips at least thirty days previous to the said day of sale; and, on the said fifth day of November, in the year aforesaid, the said taxes and costs on said tract of land still remaining unpaid, he, the said Miller Irvin, sheriff as aforesaid, did proceed to sell, at public auction, at the court-house door of the said county of Phillips, the said tract of land, or so much thereof as would be sufficient to pay the taxes and costs due thereon as aforesaid.

Whereupon William Vales bid, and offered to pay the taxes and costs due on said tract of land, for eighty acres of south side thereof; and no other person or persons bidding, or offering to pay the same for a less quantity thereof, the same was struck off to the said William Vales; which said State and county taxes, and costs, did amount to the sum of three dollars and seventy cents. And the said William Vales having paid to Miller Irvin, sheriff as aforesaid, the said sum of three dollars and seventy cents, the receipt whereof is hereby acknowledged, and the term of twelve months, the time allowed by law for the redemption of said tract of land, having expired since the day of sale, and the said Richard Davidson, assignee as aforesaid, having produced to me, Miller Irvin, the sheriff, the certificate granted by Miller Irvin, as sheriff, to said William Vales at the time of the purchase thereof, and the said Richard Davidson, assignee as aforesaid, requiring of me a deed for the same—

Now know ye, that I, Miller Irvin, sheriff as aforesaid, by virtue of the authority in me vested by law, and in consideration of the said sum of three dollars and seventy cents, so received by Miller Irvin, sheriff as aforesaid, have granted, bargained, and sold, and do by these presents grant, bargain, and sell, unto the said Richard Davidson, assignee as aforesaid, his heirs and assigns, the above described tract or parcel of land, hereby granting and conveying to the said Richard Davidson, assignee as aforesaid, his heirs and assigns, all the right, title, claim, and interest of said Zimri F. Henry, and all and any person or persons whomsoever, in the same, together with the tenements [and] hereditaments thereunto belonging; to have and to hold the said tract of land to the said Richard Davidson, assignee as aforesaid, his heirs and assigns, forever, as fully and absolutely as I, the said Miller Irvin, sheriff as aforesaid, under the authority aforesaid, might, could, or ought to sell and convey the same.

In testimony whereof I, the said Miller Irvin, sheriff as aforesaid, have hereunto set my hand and seal, on the day and year first above written.

MILLER IRVIN, [L. S.]
Sheriff of Phillips county.

In presence of—
A. WILKINS,
WM. G. ROSSA.

STATE OF ARKANSAS, *Phillips county.*

This day personally appeared before me, the undersigned, *and* acting justice of the peace in and for the county aforesaid, Miller Irvin, sheriff of Phillips county, to me personally well known, who stated and acknowledged that he voluntarily executed the within and foregoing deed, hereunto annexed, for the consideration, uses, and purposes, therein mentioned and set forth.

Given under my hand and seal, at Helena, this 22d day of October, 1844.

ALBERTES WILKINS, [L. S.]
Justice of the peace.

STATE OF ARKANSAS,
County of Phillips, ss.

I, Lorenzo D. Maddox, clerk of the circuit court, and ex officio recorder for the county aforesaid, do hereby certify, that the annexed and foregoing instrument of writing was filed for record in my office, on the 26th day of October, A. D. 1844, and the same now is duly recorded in record book G, pages 353, 354, and 355.

In testimony whereof I have hereunto set my hand, and affixed the seal of my office, at Helena, the 11th day of November, in the year of our Lord one thousand eight hundred and forty-four, and of the independence of the United States the 69th year.

L. D. MADDOX,
Clerk, and ex officio recorder.

This is the paper marked (B,) referred to in the deposition of Albertes Wilkins, hereto annexed.

ALBERTES WILKINS.

A. G. UNDERWOOD, *J. P.*

Article.

DISTRICT OF ARKANSAS, *sct.*

To Truman Roberts, or Col. A. Fowler, attorney of record.

Take notice, that, in pursuance of a commission duly issued in that behalf from the circuit court of the United States, for the district of Arkansas, I shall proceed to take the depositions of witnesses at the law

office of John Preston, jr., in the town of Helena, in Phillips county, in the State of Arkansas, on the 2d day of September, A. D. 1850, between the hours of 8 o'clock, a. m., and 5 o'clock, p. m., of said day; and, if not completed on that day, to be continued from day to day at the same place, and between the same hours, till completed; to be read in evidence, conditionally, on the final trial and hearing of a certain cause now depending in said circuit court of the United States, for the district of Arkansas, on the law side thereof, wherein you are plaintiff, and I am defendant, on the part of defendant; when and where you can attend and cross examine, &c., if you think fit.

JEROME B. PILLOW,
By PIKE & CUMMINS, *Atto's.*

July 26th, 1850.

July 26, 1850. I acknowledge service of the above notice, by receipt of copy.

A. FOWLER, *Attorney*,
For TRUMAN ROBERTS.

STATE OF ARKANSAS,
County of Phillips, ss.

I, A. G. Underwood, an acting and duly commissioned justice of the peace, in and for the county of Phillips, do hereby certify and make known, that the foregoing depositions of Albertes Wilkins, William Wetherby, and Richard Wood, were taken before me, as such justice, on the 2d day of September, A. D. 1850, between the hours, and at the place in the caption hereof above mentioned; that the examinations, responses, and statements, of each of said deponents, were reduced to writing by me, and by the said depenents respectively sworn to and subscribed in my presence, at the time and place aforesaid, and that said deponents are residents of the county of Phillips, in the State of Arkansas.

In testimony whereof I, A. G. Underwood, as such justice, do hereto set my hand, at the county of Phillips, in the State of Arkansas, this 2d day of September, A. D. 1850.

A. G. UNDERWOOD, *J. P.*

STATE OF ARKANSAS,
County of Phillips, ss.

I, R. H. Yeates, clerk of the circuit court of the county of Phillips, in the State of Arkansas, which court is a court of record, do hereby certify, that A. G. Underwood, whose name is signed to the annexed and foregoing certificate as a justice of the peace, is, and was at the time of the taking the foregoing depositions, and signing said certificate, an acting justice of the peace, in and for the county of Phillips, in the State of Arkansas, and duly commissioned as such.

In witness whereof, I, as such clerk, have hereto set my hand and affixed my seal of office, at my office in the county aforesaid, this second day of September, A. D. 1850.

[L. S.]

RICHARD H. YEATES, *Clerk*.

The foregoing depositions marked as follows:

Opened and published March 27, 1851, by consent of parties, having been filed September 9, 1850.

Attest:

WM. FIELD, *Clerk*,
By R. SEARCY, *D. C.*

And on the 26th day of August, 1850, the following proceedings were had in this case, to wit:

UNITED STATES OF AMERICA,
District of Arkansas.

Before the clerk of the circuit court of the United States, for the district of Arkansas, in vacation, on the 26th day of August, 1850.

TRUMAN ROBERTS, plaintiff,
vs.
JEROME B. PILLOW, defendant. } Ejectment.

On this day came the said plaintiff, by his attorney, and upon his motion it is ordered that he have, and leave is hereby granted unto him, to take the deposition of witnesses generally before any judge or justice of the peace of the United States, or any one of them, to be read as evidence on the trial of this cause.

Attest:

WM. FIELD, *Clerk*,
By R. SEARCY, *D. C.*

UNITED STATES OF AMERICA,
District of Arkansas.

Before the clerk of the circuit court of the United States, for the district of Arkansas, in vacation, on the 26th day of August, 1850.

TRUMAN ROBERTS, plaintiff,
vs.
JEROME B. PILLOW, defendant. } Ejectment.

On this day came the said plaintiff, by his attorney, and upon his motion it is ordered that he have, and leave is hereby granted unto him, to take the depositions of witnesses generally before any judge or justice of the peace of the United States, or any one of them, to be read as evidence on the trial of this cause.

Attest:

WM. FIELD, *Clerk*,
By R. SEARCY, *D. C.*

A true copy from the record.

Attest:

WM. FIELD, *Clerk*,
By R. SEARCY, *D. C.*

UNITED STATES OF AMERICA,
District of Arkansas.

The President of the United States, to any judge or justice of the peace of the United States, or any one of them, greeting:

You are hereby required to cause to come before you all witnesses whatever, and them diligently examine, as well on the part of the plaintiff as of the defendant, in a certain suit now pending in our said circuit court, in which Truman Roberts is plaintiff, and Jerome B. Pillow is defendant; and that you then and there examine them apart upon their respective corporal oaths, first taken before you on the holy evangelists, and that you reduce their examinations to writing; and when you shall have so taken them, that you send the same with this dedimus, closed up under your seal, to our said circuit court, at the city of Little Rock, without delay.

In testimony whereof, [I,] Roger B. Taney, esq., chief justice of the Supreme Court of the United States, has caused the seal [L. S.] of said circuit court to be hereto affixed, this 26th day of August, A. D. 1850, and of American independence the 75th year.

Attest: WM. FIELD, *Clerk*,
By R. SEARCY, *D. C.*

Mr. JEROME B. PILLOW:

Take notice, that in a certain action of ejectment now pending in the circuit court of the United States, for the district of Arkansas, wherein I am the plaintiff and you are the defendant, under a rule and commission for that purpose, I will take the depositions of witnesses to be read in evidence in my behalf on the trial of said cause, at the court-house in the town of Helena, county of Phillips, on the 17th day of September, A. D. 1850; and if not completed on that day, the taking thereof will be continued from day [to-day] by adjournment until completed, when and where you can attend if you think proper.

Very respectfully, your obedient servant,
TRUMAN ROBERTS, *Plaintiff*.
By his attorney, A. FOWLER.

Time waived, and the appointment in the within notice corrected to, for the taking of depositions in the within named case, September 7, A. D. 1850.

JNO. PRESTON, Jr.,
Attorney for defendant.

Depositions of witnesses taken before me, an acting justice of the peace for the county of Phillips, in the State of Arkansas, duly commissioned as such, on the 17th day of September, A. D. 1850, at the court-house in the town of Helena, in the county of Phillips, in the State of Arkansas, in pursuance of a commission hereto annexed,

and to be read in evidence in a certain cause now pending in the circuit court of the United States, for the district of Arkansas, wherein Truman Roberts is plaintiff and Jerome B. Pillow is defendant, on the part of the plaintiff.

Richard Wood, a witness, known by me to be of lawful age, being at the time and place aforesaid produced, and by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in *in* the suit aforesaid, did then and there on his oath aforesaid depose and say:

Question 1st by the plaintiff. Are you or not acquainted with Truman Roberts and Jerome B. Pillow, the plaintiff and defendant in this suit?

Answer. I am acquainted with Jerome B. Pillow, the defendant, but not with Truman Roberts, the plaintiff.

Question 2d by plaintiff. Do you know the locality of the S. E. qr. of section No. 23, in township No. 1 south, of range No. 3 E., in Phillips county?

Answer. Yes, I do.

Question 3d by plaintiff. State, if you please, who is in the occupation of said tract of land, and how long he has had possession of the same.

Answer. Mr. Jerome Pillow, the defendant, is in possession of said tract of land. I do not recollect how long he has had possession, but I think this is the second year.

Question 4th by plaintiff. What would be the value of the annual rent of the land above described in the 2d question?

Answer. About four hundred dollars.

Question 5th by plaintiff. What would you estimate the value of said quarter section of land to be?

Answer. I think it to be worth fifteen dollars per acre.

Cross examined by defendant.

Question 1st. What would you estimate the value of that tract of land to be in connexion with the plantation now cultivated by the defendant?

Answer. The quarter section being in the centre of the plantation of the defendant, and all cleared, is worth on that account from twenty-five to thirty dollars per acre. And further this deponent saith not.

RICHARD WOOD.

STATE OF ARKANSAS,
County of Phillips.

I, Robert Malony, an acting justice of the peace, and duly commissioned, in and for said county of Phillips, in the State of Arkansas, do hereby certify, that the foregoing deposition of Richard Wood was taken before me on the 17th day of September, A. D. 1850, at the time and place in the caption hereof above mentioned, and the same was re-

duced to writing by me, and sworn to and subscribed by said witness in my presence, at the time and place aforesaid; and that said witness, Richard Wood, is a resident of the county of Phillips, in the State of Arkansas.

In witness whereof, I, Robert Malony, a justice of the peace as aforesaid, do hereto set my hand as such at the place set forth in the caption, on the 17th day of September, A. D. 1850.

R. MALONY, *J. P.*

William Wetherby, a witness known by me to be of lawful age, being at the said time and place aforesaid produced, and by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there on his oath aforesaid depose and say:

Question 1st by plaintiff. Please state whether you are acquainted with the plaintiff and defendant in this suit.

Answer. I am acquainted with Jerome B. Pillow, the defendant, but not with Truman Roberts, the plaintiff.

Question 2d by plaintiff. Do you know the locality of the southeast quarter of section No. 23, in township No. 1 south, of range No. 3 east, in Phillips county?

Answer. I do.

Question 3d by plaintiff. Who had the possession of that quarter section of land on the 13th day of February, A. D. 1850?

Answer. Jerome Pillow, the defendant.

Question 4th by plaintiff. How long has he had possession of said tract of land?

Answer. About twenty months.

Question 5th by plaintiff. What is the rent of said quarter section of land worth per annum?

Answer. As land rents in that neighborhood, it is worth about four hundred dollars per annum.

Question 6th by plaintiff. What is the value of that quarter section of land?

Answer. The land is worth intrinsically twenty-five dollars per acre without the improvements; but owing to the position of the land, and the buildings upon it at the present time, that it occupies in the farm, I would estimate the abstraction of said quarter section of said land from the plantation would result in the damage to the defendant of not less than fifty dollars per acre.

Question 7th by plaintiff. Are you the superintendent or overseer for the defendant, Jerome Pillow?

Answer. I am.

Question 8th by plaintiff. Please state when the defendant began to erect any buildings on said tract of land.

Answer. He commenced hauling logs for the cabins about November, 1849, and erected the cabins the January following.

Question 9th by plaintiff. Do you not know that it was the inten-

tion of the defendant, at the time he commenced the buildings on said tract of land, to so load it with improvements as to embarrass the redemption of said tract of land by the plaintiff?

Answer. I am satisfied that such was not his intention at the time of the commencement of said improvements, and that commenced prior to his having any notice of this suit; and my impressions from frequent conversations with the defendant is, that he would not have continued the improvements from the time of the notice of this suit, but from the fact that he felt safe and secure from the solvency of his vendors, Samuel H. Armstrong and Richard Davidson.

Cross examination by defendant.

Question 1st. Did you not regard the spot selected for the building of the cabins, above referred to, as the most eligible upon the place?

Answer. Yes.

Question 2d. Was not the eligibility of the spot selected which led to the building the cabins thereon?

Answer. Yes.

Question 3d. Are these buildings now completed; if not, when will they be completed?

Answer. They are not completed, but will be about the first of January next.

Question 4th. What do these buildings, of which you speak, consist of?

Answer. Twenty negro cabins, one dwelling house, smoke house, and store or lumber room.

Question 5th by defendant. What will be the value of these buildings above referred to when completed?

Answer. I think they will be worth about twenty-five hundred and fifty dollars.

Re-examined by plaintiff.

Question by plaintiff. You state that the buildings on said quarter [section] of land are not yet completed. What portion in value had been completed on and prior to the 13th day of February, A. D. 1850?

Answer. I would estimate the value of the buildings as far [as] completed, together with all the logs then upon the ground, to be about six hundred dollars.

Question. Do you know any thing further that would be of any benefit to either the plaintiff and defendant in this suit?

Answer. No, I believe not.

WILLIAM WEATHERBY.

STATE OF ARKANSAS,
County of Phillips.

I, Robert Malony, an acting justice of the peace, and duly commissioned in and for said county of Phillips, in the State of Arkansas, do

hereby certify, that the foregoing deposition of William Weatherby was taken before me on the 17th day of September, A. D. 1850, at the time and place in the caption thereof mentioned, and the same was reduced to writing by me, and sworn to and subscribed by said witness in my presence, at the time and place aforesaid, and that the said witness, William Weatherby is a resident of the county of Phillips, in the State of Arkansas.

In witness whereof, I, Robert Maloney, a justice of the peace as aforesaid, hereunto set my hand as such, at the place set forth in the caption, on the 17th day of September, A. D. 1850.

ROBERT MALONEY, *J. P.*

Opened and published by consent of parties March 27th, 1851, having been filed September 27th, A. D. 1850.

Attest, WM. FIELD, *Clerk*,
By R. SEARCY, *D. C.*

And at a circuit court for the district aforesaid, continued and holden on the 16th day of April, A. D. 1851, the following further proceedings were had, Hon. Daniel Ringo, judge, presiding, to wit:

TRUMAN ROBERTS, plaintiff,
vs.
JEROME B. PILLOW, defendant.

Ejectment.

This day came the said defendant, by A. Pike, esquire, his attorney, and asked leave of the court to substitute other pleas in this case in lieu of those already filed, and offered to file the same.

And on the 24th day of April, 1851, the following further proceedings were had in said cause, before said court, to wit:

TRUMAN ROBERTS, plaintiff,
vs.
JEROME B. PILLOW, defendant.

Ejectment.

This day came the said defendant, by A. Pike, esq., his attorney, and by leave of the court first had for that purpose, withdraws his two pleas of the statute of limitation heretofore filed in this case, and filed two other pleas of the statute of limitation in lieu thereof. Which pleas are in the following words and figures, to wit:

In the United States circuit court, in the Arkansas district, at April term, 1851.

JEROME B. PILLOW, defendant,
ads.
TRUMAN ROBERTS, plaintiff,

Ejectment.

And the said defendant comes, &c., when, &c., and for a further

and second plea in this behalf says, actionem non, &c., because, he says, that more than five years before the commencement of this suit, the south half of said southeast quarter of section twenty-three, in township one south, of range three east, of the fifth principal meridian, being one-half of the premises in the declaration mentioned, was sold by Miller Irvin, esq., then sheriff of the county of Phillips, in said State of Arkansas, in which said premises are and then were situate, in his capacity of collector of the taxes and revenue of the State of Arkansas and county of Phillips, assessed under and by virtue of the statutes in such case made and provided, for the payment of the taxes and costs then due said State and county upon said premises, to the last and highest bidder, at public auction, at the court-house door in said county, and then there purchased by, and struck off to, one William Vales, to wit, on the fifth day of November, A. D. 1839, the said taxes and costs being due thereon for that year; and after the expiration of twelve months from that time, to wit, on the 22d day of October, A. D. 1844, the said Miller Irvin, as such sheriff, under and by virtue of said sale, by deed of that date, duly executed, acknowledged, and recorded, conveyed said south half of said quarter section in fee to one Richard Davidson, as the assignee of, and by the direction of, said William Vales; and, further, that more than five years before the commencement of this suit, to wit, on the first day of March, in the year 1841, the north half of said quarter section, being the residue of said premises, was sold by said Miller Irvin, then still the sheriff of said county, in his said capacity of collector of the said taxes and revenue, under and by virtue of said statutes, for the payment *for the payment* of the taxes and costs then due thereon to said State and county for the year 1840, to the last and highest bidder, at public auction, at said court-house door, and then there purchased by, and struck off to, one John J. Powell; and after the expiration of twelve months from that time, to wit, on the 22d day of October, A. D. 1844, the said Miller Irvin, as such sheriff, under and by virtue of said sale, by deed of that date, duly executed, acknowledged, and recorded, conveyed said north half of said quarter section to Richard Davidson, as assignee of, and by direction of, said John J. Powell; and on the 20th day of January, A. D. 1848, the said Richard Davidson, by deed of that date, by him and his wife duly executed and acknowledged, and thereafter duly recorded, conveyed and assured said premises to one Samuel Henry Armstrong, who, on the 16th day of May, A. D. 1849, by deed of that date, by him and his wife duly executed and acknowledged, and thereafter duly recorded, conveyed and assured said premises to the said defendant; and that from the dates of said respective sales the said defendant, and the said several grantees, have successively had exclusive and undisturbed possession of said premises, and more than five years had elapsed after each of said sales before the commencement of this suit; and this he is ready to verify. Wherefore he prays judgment if the plaintiff his action aforesaid thereof against him ought to have and maintain.

PRESTON, CUMMINS & PIKE.

And for a further and third plea in this behalf, the defendant says, actionem non, &c.; because, he says, that the said plaintiff was not, nor was any [of] his ancestors, predecessors, or grantor, seized or possessed of said premises, or any part thereof, within ten years next before the commencement of this suit, and this he is ready to verify; wherefore he prays judgment if the plaintiff his action aforesaid thereof against him ought to have or maintain.

PRESTON, PIKE & CUMMINS.

Filed April 24th, 1851.

Attest: WM. FIELD, *Clerk*,
By B. T. DUVAL, *D. C.*

And on the 26th day of April, A. D. 1851, before the Hon. Daniel Ringo, United States judge, presiding in said court, the following further proceedings were had, to wit:

TRUMAN ROBERTS, plaintiff,
vs.
JEROME B. PILLOW, defendant. } Ejectment.

This day came the said plaintiff, by A. Fowler, esq., his attorney, and files his demurrer to the second and third pleas of the said defendant heretofore filed in this case; which demurrer is as follows, to wit:

In the circuit court of the United States, for the district of Arkansas, held at Little Rock, in the April term thereof, 1851.

TRUMAN ROBERTS, plaintiff,
vs.
JEROME B. PILLOW, defendant. } In ejectment.

And the said plaintiff, as to the said substituted pleas of the said defendant, by him secondly and thirdly above pleaded at the present term of this court, says, that the same and each of them, and the matters in each of them or either contained, in manner and form as the same are above therein pleaded and set forth, are not sufficient in law, nor is either of them, to bar or preclude him, the said Truman, from having or maintaining his aforesaid action thereof against him, the said Jerome B.; and that he, the said Truman, is not bound by the laws of the land to answer the same; and this he, the said Truman, is ready to verify; wherefore, for want of sufficient pleas in this behalf, he, the said Truman, prays judgment, &c. And the said Truman, according to the form of the statute in such case made and provided, states and shows to the court here the following causes of demurrer to the said second and third pleas; that is to say, that said second plea is insufficient, in this, that it fails to aver that the said collector's sales, therein specified, were made in conformity with the statutes then in force, and that the assessment and listing for the taxation of said lands were in such conformity, and the execution and acknowledgment of such conveyances

by such collector were made in like manner, and all the proceedings under which said lands [were] so sold by the said collector, were regular and in strict conformity with the statute in such case made and provided; and also that said second plea does not specifically aver that such sales, so alleged to have been made by the collector, were regular and valid sales according to the laws then in force.

And that said third plea is insufficient, in this, that it fails to aver that the said defendant, and those under whom he claims, during the said period of ten years therein mentioned, have continually held said tract of land in their possession, and adversely to the said plaintiff; and also that said third plea is insufficient, in this, that [it] fails to show that the said Jerome B., and those under whom he claims, hold said tract of land by any right or title whatever; and also that said third plea concludes with a verification, whereas it ought to conclude to the country; and also that second and third pleas are, in other respects, uncertain, informal, and insufficient, &c.

A. FOWLER, *Atto.*,
For ROBERTS.

Filed 26th April, 1851.
Attest:
WM. FIELD, *Clerk*,
By R SEARCY, *D. C.*

And on the 29th day of April, A. D. 1851, before the said court, the following further proceedings were had, to wit:

TRUMAN ROBERTS, plaintiff,
vs.
JEROME B. PILLOW, defendant.
} Ejectment.

This day came the said parties, by their respective attorneys, and the demurrer heretofore filed in this cause was argued by counsel and submitted to the court; and the court not being sufficiently advised of the matters of law arising thereon, takes the same under advisement.

And on the 16th day of June, A. D. 1851, at a court continued and holden for the said district of Arkansas, the honorable Daniel Ringo, United States judge, presiding, the following proceedings were had, to wit:

TRUMAN ROBERTS, plaintiff,
vs.
JEROME B. PILLOW, defendant.
} *Ejectment.*

And now on this day came the parties, by their attorneys, and the court being now fully advised of the matters set up in the demurrer of the plaintiff to the second and third pleas of the said defendant, doth consider that the said demurrer be sustained.

And on the 18th day of June, A. D. 1851, before said court, the following further proceedings were had in this case, to wit:

4942.

TRUMAN ROBERTS, plaintiff,
vs.
JEROME B. PILLOW, defendant. } *Ejectment.*

This day came the parties aforesaid, by their respective attorneys, and on motion a jury came, to wit: William A. Mills, John W. Farley, John Hirst, Marmaduke Osborne, Isom M. Kittle, Francis Drew, John W. Walker, James A. Hutchings, William H. Graham, George Bursey, Frederick S. Garrett, and Lemuel H. Goodrich, being twelve in number, who were sworn well and truly to try the issue joined between Truman Roberts, plaintiff, and Jerome B. Pillow, defendant, and a true verdict render according to the evidence; after having heard the evidence, returned into court the following verdict, to wit:

We, the jury, find for the plaintiff, and that the defendant is guilty of the trespass and ejectment in the within declaration mentioned, and we assess the damages by the said plaintiff sustained at the sum of five hundred dollars.

WH. H. GRAHAM,
Foreman.

It is therefore considered by the court that the said Truman Roberts do have and recover of the said Jerome B. Pillow the premises described in the said plaintiff's declaration, to wit the southeast quarter section, numbered twenty-three, in township numbered one south, range numbered three east, containing one hundred and sixty acres of land; and also the sum of five hundred dollars for his damages assessed as aforesaid, together with all his costs by him about his suit in this behalf expended; and that the said defendant be in mercy, &c.

And on motion of the defendant time is granted him to prepare and reduce to proper form his exceptions, taken and reserved during the trial, to certain opinions of the court pronounced in this cause during the progress of the trial.

And on the 19th day of June, A. D. 1851, before the said circuit court of the United States aforesaid, the following further proceedings were had, to wit:

TRUMAN ROBERTS, plaintiff,
vs.
JEROME B. PILLOW, defendant. } *Ejectment.*

This day came the said Jerome B. Pillow, and presents his bill of exceptions in this case, in accordance with leave granted him at the trial in this case, to prepare and present the same at a future day of this term, which bill of exceptions is accordingly signed and sealed by the court, and ordered to become and constitute a part of the record of this cause, together with the papers thereto annexed and thereto referred to.

And thereupon the said Jerome B. Pillow files a writ of error to the Supreme Court of the United States in this case, and lodges a copy thereof with the clerk of this court for the said Truman Roberts; and also files his assignment of errors, and prays the court that his said writ of error may be allowed, and the same is allowed accordingly; and the clerk [is] ordered to send up a transcript of the record in obedience to said writ; and the said Truman Roberts, by his attorney, consents that service of the citation in this cause issued upon Absalom Fowler, esquire, his attorney, shall be as valid and sufficient as if served personally upon himself.

And thereupon it is directed by the court, that the said plaintiff in error do give, or cause to be given, a bond, with two sufficient securities, to the defendant in error, in the sum of three thousand dollars, conditioned according to law, and to be approved by the judge of this court, and that he file the same within twenty days from this date in the office of the clerk of this court.

The following is the bill of exceptions filed in this case:

In the circuit court of the United States, for the eastern district of Arkansas, at April term, (adjourned,) A. D. 1851.

TRUMAN ROBERTS, plaintiff,
vs.
JEROME B. PILLOW, defendant. } *In Ejectment.*

Be it remembered, that on the trial of this cause before the jury, the following evidence was offered and given to the jury, or rejected as hereafter stated, and the following decisions made, that is to say:

The plaintiff first read in evidence, without objection, an exemplification of a patent which issued from the United States, on the twenty-seventh day of May, A. D. 1835, to Zimri V. Henry, for the land described in the declaration, whereby the United States conveyed and granted the same to him and his heirs, in fee simple, forever.

And thereupon the plaintiff next offered to read in evidence an instrument of writing, with two certificates thereto annexed, in the words and figures following, to wit:

This deed, made and entered into this tenth day of November, in the year of our Lord one thousand eight hundred and forty-nine, by and between Zimri V. Henry, a soldier in the late war with England, now of Walworth county, and State of Wisconsin, as party of the first part, and Truman Roberts, of the city of St. Louis, and State of Missouri, as party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of two hundred dollars, in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, and sold, and quit claimed, and by these presents does grant, bargain, and quit claim, unto the said party of the second part, his heirs and assigns for-

ever, all the following described tract of land, viz., one tract containing one hundred and sixty (160) acres of land, being the southeast quarter of section twenty-three, (23,) in township one, (1,) south, of range three (3) east, lying and being in the State of Arkansas. To have and to hold the same, with all the rights, privileges, and appurtenances thereunto belonging, or in any wise appertaining, unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part has hereto set his hand and seal, the day and year first above written.

ZIMRI V. HENRY. [SEAL.]

Done in presence of us, witnesses—
W. H. PETTIT,
PHILETUS S. CARVER.

STATE OF WISCONSIN,
County of Walworth, ss.

Be it remembered, that on this tenth day of November, in the year of our Lord one thousand eight hundred and forty-nine, personally came and appeared before me, the undersigned clerk of the circuit court, within and for the county of Walworth, and State aforesaid, Zimri V. Henry, who is personally known to be the grantor to the within deed of conveyance, and signed it as [a] party thereto, and acknowledged the same to be his free act and deed, for the uses, purposes, and considerations therein mentioned and expressed.

To all of which I certify, under my hand and seal of said court, at my office, in Elkhorn county, and State aforesaid, the day and date last above written. [L. S.]

W. H. PETTIT,
Clerk of the circuit court aforesaid.

STATE OF ARKANSAS,
County of Phillips, ss.

I, Richard H. Yeates, clerk of the circuit court, and ex officio recorder for the county aforesaid, do hereby certify, that the annexed and foregoing instrument of writing was filed for record in my office on the 14th day of January, A. D. 1850, and the same is now duly recorded in record book I, page 201.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, in Helena, the 14th day of January, A. D. 1850, and of the independence of the United States the 74th year.

R. H. YEATES,
Clerk and ex officio recorder,
By ROBERT MALONEY, *D. C.*

Which paper was so offered to be read, without any proof of its execution or the identity of the grantor therein named, and of said

patentee, other than the certificate thereto annexed; the said paper purporting to be the deed being one piece of paper, and the certificate of acknowledgment on another, and the two connected together by wafers only; and what purported to be the seal to said acknowledgment of the circuit court of the county of Walworth, in the State of Wisconsin, being a mere impression of a seal stamped on the paper itself, and not impressed on wax, wafer, or any other adhesive or tenacious substance.

To the reading of which papers in evidence the defendant objected, and prayed the court not to permit the same to be read to the jury, because no seal was affixed to the certificate of acknowledgment, but only an impression on paper; but the court overruled the said objection, and allowed the same to be read to the jury as evidence of title; to which opinion and decision of the court so overruling his said objection, and admitting the same to be read to the jury, the defendant excepted at the time; and time was given him to prepare and present his bill of exceptions at a future day of the term.

And thereupon the plaintiff read without objection, the depositions of Richard Wood and William Wetherby, taken on his behalf, and now on file among the papers of the case, and which depositions are hereto annexed, and are directed to be copied as part of this bill of exceptions, and to form and constitute a part of the record of this cause.

And it was admitted by the defendant, that a quarter section of land contains one hundred and sixty acres, and that the writ of summons in this case issued on the 13th day of February, A. D. 1850, and was executed upon the defendant on the ninth day of March, A. D. 1850.

And whereupon the defendant read, without objection, the deposition of Albertis Wilkins, William Weatherby, and Richard Wood, which are on file in this cause among the papers of the case, and which depositions are to be annexed hereto, and are directed to be copied as part of this bill of exceptions, and to form and constitute a part of the record of this cause.

And thereupon the defendant offered to read in evidence, as a of proof of title in himself, two deeds of Miller Irving, sheriff of Phillips county, in the State of Arkansas, with the certificates thereto attached, as the same accompanying, and are referred to in, and annexed to, the first of said depositions read by the defendant, and the same are likewise directed to be copied as part of this bill of exceptions, and to form and constitute part of the record in this case; but the plaintiff objected to the reading of the same, and his objection was sustained by the court; and said court refused to permit, and did not permit, either of said deeds to be read to the jury. To which opinion and decision of the court, refusing to permit the said deeds to be read to the jury, the defendant excepted at the time, and time was given him to prepare and file his bill of exceptions at a future day of the term.

And thereupon the defendant produced and offered to read in evidence a deed of conveyance in fee from Samuel H. Armstrong and wife to himself, for the said land here sued for, and other land, executed on the sixteenth day of May, 1849, and duly, and in due time,

witnessed, acknowledged, and recorded in said county of Phillips, where the lands here sued for are situate; and also a deed of conveyance in fee from Richard Davidson and wife to said Samuel H. Armstrong to the same land and other lands, executed on the twentieth day of January, A. D. 1848, and duly, and in due time, witnessed, acknowledged, and recorded in said county of Phillips; and also the same two deeds before offered, executed by said Miller Irvin, sheriff of Phillips county, and annexed to said depositions of the defendant, and prayed to be allowed to read the same for the purpose of establishing that the possession of said land by him, the said defendant, and those through whom he claimed title to said land, had been, as to the south half of said land, adverse to the said plaintiff and the said Zimri V. Henry, for more than ten years, and as to the whole of said land for more than five years, before this suit was commenced; that the plaintiff objected to the reading of the same for that purpose, and his objection was sustained by the court, and it was by the court ruled that the possession of such deeds, accompanied by the possession of the land, was not sufficient to prove such possession of the land to be adverse to the plaintiff and his grantor, without further proof that the defendant or his grantors claimed adversely; and so the court refused to permit any of said deeds to be read in evidence to the jury. To which opinion and decision of the court refusing to permit said deeds to be read to the jury, the defendant excepted at the time, and time was given him until a future day of the term to prepare and file his bill of exceptions.

And no other evidence being given or offered in the case, the cause was submitted to the jury, and their verdict returned, and judgment rendered in accordance thereunto.

To which said several opinions and decisions of the court, so made as aforesaid, refusing to exclude said paper purporting to be the deed of said Henry to said plaintiff, and the said certificate thereto annexed, from the jury, and allowing the same to be read; and refusing to permit the said two deeds of Miller Irvin, sheriff, aforesaid, to be read to the jury; and also refusing to allow said four last mentioned deeds to be read to the jury for the special purpose aforesaid, the said defendant now excepts, and prays that his bill of exceptions may be signed, sealed, and enrolled, and it is accordingly so done, on this nineteenth day of June, A. D. 1851, during said term, and within the time allowed for filing the same.

DANIEL RINGO, [SEAL.]
U. S. Judge, &c.

Endorsed—Filed 19th June, 1851.
Attest: WM. FIELD, *Clerk*,
By R. SEARCY, *Dep. Clerk*.

THE UNITED STATES OF AMERICA,
Eastern district of Arkansas, ss.

Before the clerk of the circuit court of the United States, for the

patentee, other than the certificate thereto annexed; the said paper purporting to be the deed being one piece of paper, and the certificate of acknowledgment on another, and the two connected together by wafers only; and what purported to be the seal to said acknowledgment of the circuit court of the county of Walworth, in the State of Wisconsin, being a mere impression of a seal stamped on the paper itself, and not impressed on wax, wafer, or any other adhesive or tenacious substance.

To the reading of which papers in evidence the defendant objected, and prayed the court not to permit the same to be read to the jury, because no seal was affixed to the certificate of acknowledgment, but only an impression on paper; but the court overruled the said objection, and allowed the same to be read to the jury as evidence of title; to which opinion and decision of the court so overruling his said objection, and admitting the same to be read to the jury, the defendant excepted at the time; and time was given him to prepare and present his bill of exceptions at a future day of the term.

And thereupon the plaintiff read without objection, the depositions of Richard Wood and William Wetherby, taken on his behalf, and now on file among the papers of the case, and which depositions are hereto annexed, and are directed to be copied as part of this bill of exceptions, and to form and constitute a part of the record of this cause.

And it was admitted by the defendant, that a quarter section of land contains one hundred and sixty acres, and that the writ of summons in this case issued on the 13th day of February, A. D. 1850, and was executed upon the defendant on the ninth day of March, A. D. 1850.

And whereupon the defendant read, without objection, the deposition of Albertis Wilkins, William Weatherby, and Richard Wood, which are on file in this cause among the papers of the case, and which depositions are to be annexed hereto, and are directed to be copied as part of this bill of exceptions, and to form and constitute a part of the record of this cause.

And thereupon the defendant offered to read in evidence, as a of proof of title in himself, two deeds of Miller Irving, sheriff of Phillips county, in the State of Arkansas, with the certificates thereto attached, as the same accompanying, and are referred to in, and annexed to, the first of said depositions read by the defendant, and the same are likewise directed to be copied as part of this bill of exceptions, and to form and constitute part of the record in this case; but the plaintiff objected to the reading of the same, and his objection was sustained by the court; and said court refused to permit, and did not permit, either of said deeds to be read to the jury. To which opinion and decision of the court, refusing to permit the said deeds to be read to the jury, the defendant excepted at the time, and time was given him to prepare and file his bill of exceptions at a future day of the term.

And thereupon the defendant produced and offered to read in evidence a deed of conveyance in fee from Samuel H. Armstrong and wife to himself, for the said land here sued for, and other land, executed on the sixteenth day of May, 1849, and duly, and in due time,

witnessed, acknowledged, and recorded in said county of Phillips, where the lands here sued for are situate; and also a deed of conveyance in fee from Richard Davidson and wife to said Samuel H. Armstrong to the same land and other lands, executed on the twentieth day of January, A. D. 1848, and duly, and in due time, witnessed, acknowledged, and recorded in said county of Phillips; and also the same two deeds before offered, executed by said Miller Irvin, sheriff of Phillips county, and annexed to said depositions of the defendant, and prayed to be allowed to read the same for the purpose of establishing that the possession of said land by him, the said defendant, and those through whom he claimed title to said land, had been, as to the south half of said land, adverse to the said plaintiff and the said Zimri V. Henry, for more than ten years, and as to the whole of said land for more than five years, before this suit was commenced; that the plaintiff objected to the reading of the same for that purpose, and his objection was sustained by the court, and it was by the court ruled that the possession of such deeds, accompanied by the possession of the land, was not sufficient to prove such possession of the land to be adverse to the plaintiff and his grantor, without further proof that the defendant or his grantors claimed adversely; and so the court refused to permit any of said deeds to be read in evidence to the jury. To which opinion and decision of the court refusing to permit said deeds to be read to the jury, the defendant excepted at the time, and time was given him until a future day of the term to prepare and file his bill of exceptions.

And no other evidence being given or offered in the case, the cause was submitted to the jury, and their verdict returned, and judgment rendered in accordance thereunto.

To which said several opinions and decisions of the court, so made as aforesaid, refusing to exclude said paper purporting to be the deed of said Henry to said plaintiff, and the said certificate thereto annexed, from the jury, and allowing the same to be read; and refusing to permit the said two deeds of Miller Irvin, sheriff, aforesaid, to be read to the jury; and also refusing to allow said four last mentioned deeds to be read to the jury for the special purpose aforesaid, the said defendant now excepts, and prays that his bill of exceptions may be signed, sealed, and enrolled, and it is accordingly so done, on this nineteenth day of June, A. D. 1851, during said term, and within the time allowed for filing the same.

DANIEL RINGO, [SEAL.]
U. S. Judge, &c.

Endorsed—Filed 19th June, 1851.
Attest: WM. FIELD, *Clerk*,
By R. SEARCY, *Dep. Clerk.*

THE UNITED STATES OF AMERICA,
Eastern district of Arkansas, ss.

Before the clerk of the circuit court of the United States, for the

eastern district of Arkansas, in the recess of court, on the 5th day of July, A. D. 1851.

TRUMAN ROBERTS, plaintiff,
vs.
JEROME B. PILLOW, defendant.

Ejectment.

This day came the said defendant, and on his motion filed the bond of Richard Davidson, with Walter E. Preston, W. F. Moore, Elisha Burke, and Richard Cail, his securities, in the sum of three thousand dollars, payable to the above named Truman Roberts; conditioned to prosecute the writ of error in this case to the Supreme Court of the United States; also a bond with the same parties, made payable to William Thomas Carroll, clerk of the Supreme Court of the United States, in the sum of two hundred dollars, conditioned to pay all the costs of said suit in error to the Supreme Court; which bonds were duly approved by the honorable Daniel Ringo, district judge of the United States, in and for the said district of Arkansas.

Attest: WILLIAM FIELD, *Clerk.*

Which bond is in the following words and figures, to wit:

SUPREME COURT OF THE UNITED STATES.

JEROME B. PILLOW, plaintiff in error,
vs.
TRUMAN ROBERTS, defendant in error.

In error.

Know all men by these presents, that we, Richard Davidson, as principal, and Walter Preston, W. F. Moore, Elisha Burke, and Richard Cail, as his sureties, are held and firmly bound unto the above named Truman Roberts, in the sum of three thousand dollars, of lawful money of the United States; to the payment of which, well and truly to be made to the said Truman Roberts, his heirs, executors, and administrators or assigns, we bind ourselves, and each of ourselves, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this day of June, anno domini 1851.

Conditioned that, whereas the above named Jerome B. Pillow hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the honorable the circuit court of the United States, in the eastern district of Arkansas:

Now, therefore, if the above named Jerome B. Pillow shall prosecute his said writ of error to effect, and answer all damages and costs,

if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

RICHARD DAVIDSON, [L. S.]
WALTER E. PRESTON, [L. S.]
W. F. MOORE, [L. S.]
ELISHA BURKE, [L. S.]
RICHARD CAIL. [L. S.]

Sealed and delivered in presence of—
WILLIAM CAIL,
R. C. BURKE.

The above bond is satisfactory to me, and I do approve the same as sufficient, this 5th day of July, A. D. 1851.

DANIEL RINGO, *U. S. Judge,*
For district of Arkansas.

Marked—filed 5th July, 1851.
Attest: WILLIAM FIELD, *Clerk,*
By R. SEARCY, *D. C.*

Bond for costs, to wit:

SUPREME COURT OF THE UNITED STATES.

JEROME B. PILLOW, plaintiff in error,
vs. } In error.
TRUMAN ROBERTS, defendant in error.

Know all men by these presents, that we, Richard Davidson, as principal, and Walter E. Preston, and William F. Moore, Elisha Burke, and Richard Cail, as sureties, are held and [firmly] bound unto William Thomas Carroll, esquire, clerk of the Supreme Court of the United States, in the sum of two hundred dollars, lawful money of the United States; to the payment whereof, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this day of June, A. D. 1851.

Conditioned that, whereas the above named Jerome B. Pillow hath prosecuted a writ of error to the said Supreme Court of the United States, to reverse the judgment rendered in the above entitled case by the circuit court of the United States, for the eastern district of Arkansas:

Now, therefore, if the said Jerome B. Pillow shall respond and pay all the costs in said suit in error in said Supreme Court, then this obligation shall be void, else shall remain in full force and virtue.

RICHARD DAVIDSON, [L. S.]
WALTER E. PRESTON, [L. S.]
W. F. MOORE, [L. S.]
ELISHA BURKE, [L. S.]
RICHARD CAIL. [L. S.]

Sealed and delivered in presence of us—
WILLIAM CAIL,
R. C. BURKE.

I certify that, in my opinion, the foregoing bond is amply sufficient to secure the amount of its penalty, and that the parties thereto are solvent, this 5th day of July, A. D. 1851.

DANIEL RINGO, *Judge, &c.*

Marked—filed 5th July, 1851.
Attest:

WILLIAM FIELD, *Clerk*,
By R. SEARCY, *D. C.*

The following is a copy of the writ of error filed in this case, to wit:

"UNITED STATES OF AMERICA, *sct.*

The President of the United States of America, to the judges of the circuit court of the United States, for the ninth circuit and the eastern district of Arkansas, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment, in a plea, which is in the circuit court of the United States, for the eastern district of Arkansas, before you, between Truman Roberts, plaintiff, and Jerome B. Pillow, defendant, in an action of ejectment, a manifest error hath happened, to the great damage of the said Jerome B. Pillow, as by his complainant appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 19th day of June, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-fifth year.

[L. S.]

Attest:

WM. FIELD, *Clerk*.

Marked—filed 19th June, 1851.
Attest:

WM. FIELD, *Clerk*,
By R. SEARCY, *D. C.*

4946.

THE UNITED STATES OF AMERICA,
Eastern district of Arkansas.

I, William Field, clerk of the circuit court of the United States, for the eastern district of Arkansas, do certify, that the foregoing thirty-four half sheets of paper contain a full and complete transcript of the record and papers in my office in the case of Truman Roberts, plaintiff, vs. Jerome B. Pillow, defendant, in an action of ejectment.

In testimony whereof I have hereto set my hand as clerk, and affixed the seal of said court, this first day of November, A. D. [L. S.] 1851, and the 76th year of American independence.

Attest:

WM. FIELD, *Clerk.*

UNITED STATES OF AMERICA, *sct.*

The President of the United States of America, to the judges of the circuit court of the United States, for the ninth circuit and the eastern district of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea, which is in the circuit court of the United States, for the said eastern district of Arkansas, before you, between Truman Roberts, plaintiff, and Jerome B. Pillow, defendant, in an action of ejectment, a manifest error hath happened, to the great damage of the said Jerome B. Pillow, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record [and] proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 19th day of June, in the year of our Lord one thousand eight hundred and fifty-[L. S.] one, and of the independence of the United States the seventy-fifth year.

Attest:

WM. FIELD, *Clerk.*

In the Supreme Court of the United States, December term, A. D. 1851.

JEROME B. PILLOW, plaintiff in error,
vs.
TRUEMAN ROBERTS, defendant in error.

[REC. CLXXVII, D. T. 1851.]—4

In error from the circuit court of the eastern district of Arkansas.

And the said plaintiff comes and says, that in the record and proceedings aforesaid, and also in the giving of the judgment aforesaid by the said circuit court, manifest error hath intervened:

1st. In this, to wit, that the said circuit court permitted and allowed the said defendant in error to read in evidence to the jury in said case, against the objection of the said plaintiff in error, the paper in the bill of exceptions mentioned and thereof made a part, purporting to be a deed of conveyance for the land in controversy, executed by Zimri V. Henry to the defendant in error, with certificate of acknowledgment and certificate of record thereto, when the supposed certificate of acknowledgment had no seal annexed to it, and said supposed deed had not been legally acknowledged or recorded, and ought not to have been admitted as evidence; and in this there is manifest error.

2d. There is also manifest error in this, to wit, that the said circuit court refused to allow the said plaintiff in error to read to the jury, as commencement of proof of title in him, the said two deeds executed by Miller Irvin, sheriff of Phillips county, in the State of Arkansas, with the certificate thereto annexed, which are mentioned in and form part of the said bill of exceptions; and in this there is manifest error.

3d. There is also error in this, to wit, that the said circuit court refused to permit the said plaintiff in error to read to the jury the certain deed from Samuel H. Armstrong and wife to himself, and the certain deed from Richard Davidson and wife to said Samuel H. Armstrong, for the lands in controversy; and the said two deeds from Miller Irvin, sheriff of Phillips county, with the certificates of acknowledgment and record of each of said deeds, for the purpose of establishing that the possession of said land by him, the said defendant, and those through whom he claims title to the same, had been, as to the south half of said land, adverse to the said plaintiff and his grantor for more than ten years, and as to the whole of said land for more than five years, before the commencement of said suit; and, on the contrary thereof, did adjudge and determine that the possession of said deeds from their respective dates, accompanied by the possession of the said land, was not sufficient of itself to prove such possession to be adverse to the plaintiff and his grantor, without further proof that the plaintiff or his grantor claimed adversely; and in this there is manifest error.

4th. There is also error in this, to wit, that the said circuit court sustained the said demurrer of the said defendant in error to the said second plea of the said plaintiff in error, and adjudged the said second plea not to be sufficient in law; and in this there is manifest error.

5th. There is also error in this, to wit, that the said circuit court sustained the demurrer of the said defendant in error to the said third plea of the said plaintiff in error, and adjudged the said third plea not to be sufficient in law; and in this there is manifest error.

6th. There is also error in this, to wit, that, by the record and pro-

ceedings aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given in favor of said defendant in error against the said plaintiff in error; whereas, by the law of the land, the same ought to have been given in favor of the said plaintiff in error against the said defendant in error; and in this also there is manifest error.

For which errors, and others in the record and proceedings aforesaid apparent, the said plaintiff in error prays that the judgment aforesaid, in form aforesaid given, may be reversed, annulled, and wholly held for naught, and that he may be restored to all things which he hath lost by occasion thereof.

ALBERT PIKE,
Attorney for plaintiff in error.